(3)

Single Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.A.NO. 759 /2004

APPELLANT

KANSHINATH TRIGUN, AGED ABOUT 46 YEARS, SON OF LATE ALIYAR TRIGUN, CASTE-BRAMHAN, RESIDENT OF VILLAGE – MUNUWAN, POST KARRA, P.S. AND TAH. RAJPUR, DISTT. SURGUJA (CHHATTISGARH.)

3376/04

Filed on 08/9/04

by Shri Sushil Dubey Advocate

VERSUS

to D.R. (J)

8/9/04

RESPONDENT

STATE OF CHHATTISGARH

CRIMINAL APPEAL UNDER SECTION 454 OF THE CRIMINAL PROCEDURE CODE, 1973

COPY

XI-HC-22

AFR

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर



आदेश पत्रक

मामला क्रमांक Cr.A. No. 759/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**14/2/2005**

Shri Sushil Dubey for the appellant.

Shri Ravindra Agrawal, P.L., for the State.

Heard.

The present appeal has been preferred against the order dated 16/8/2004 passed by the First Addl. Sessions Judge, Ambikapur in M.J.C. No.5/04 whereby the application filed for return of the article has been rejected.

Briefly stated the facts of the case are that the appellant's son Jitendra Tiwari was prosecuted for an offence punishable under Sections 307 & 294 of IPC as well as Section 25(1-B)(a) of the Arms Act in connection with crime No.453/96, P.S. Rajpur, Dist. Sarguja before the Addl. Sessions Judge, Ambikapur in Sessions Trial No.379/96. The trial court after considering the material on record acquitted the accused vide judgment dated 1/4/1998. While acquitting the accused, the trial court directed that the gun seized be returned back to the applicant/present appellant Kanshinath on furnishing the valid licence within two months, otherwise it will be forfeited. Thereafter, the applicant filed an application for return of seized gun before the Sessions Judge that he had no notice. The said application was rejected vide the impugned order dated 16/8/2004.

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Shri Dubey, learned counsel for the applicant/appellant, pointed out that the applicant came to know about the judgment on 17/1/2004 and he filed the application for return of the article on 6/2/2004. It is stated that the order of submitting the valid licence within two months will be reckoned from the date of knowledge and not from the date of judgment. It is contended that the application has been filed within time and the licence has been produced. The said licence is valid from 27/11/2002 to 7/11/2005. It is also contended that the words have been attributed which are not in the order.

Reliance has been placed upon the judgment of the Apex Court in the cases of ***Sunderbhai Ambalal Desai vs. State of Gujarat*** reported in ***2002 AIR SCW 5301*** & ***N. Madhavan vs. State of Kerala*** reported in ***AIR 1979 SC 1829*** and the judgment of the Orissa High Court in the case of ***Baikunthnath Mohanta vs. State*** reported in ***1996 Cr.L.J. 661***.

The Apex Court in the case of ***N. Madhvan (supra)*** has held as under:

> *"When after an inquiry or trial, the accused is discharged or acquitted, the Court should normally restore the property, which is produced before it or which is in its custody, to the person from whose custody it was taken. Departure from this rule of practice is not to be*

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*lightly made when there is no dispute or doubt that the property was seized from the custody of such accused and belonged to him."*

The Orissa High Court in the case of ***Balkunthnath (supra)*** has held as under:

*"In the case at hand, there is material to show that the licence and gun were seized from the accused as is evident from the Ex.3 and 4. An order of confiscation of property should not be made without hearing the person likely to be affected and prejudiced by the order of confiscation. It is true that the Section does not require in terms issue of a notice, but when an order is likely to prejudice a person in a proceeding, the affected person should be granted an opportunity of being heard. Elementary rules of natural justice cannot be overlooked or ignored in exercise of discretionary powers. It appears that there was no bearing on the question of disposal of the property. Though it may not be necessary in all cases, yet in a case like the one at hand where there are materials to show that the gun was seized from the accused/appellant, but there exist materials justifying confiscation, the affected person should be heard. What may have stood on the way is the answer given to question no.15 in the statement recorded under Section 313 of the Code. The learned trial Judge should have granted an opportunity to the appellant to place his case for consideration."*

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On perusal of the record, it is noted that the accused has been acquitted not only from the offence punishable under Sections 307 & 294 IPC, but also under Sec. 25(1-B)(a) of the Arms Act and the applicant was not given any notice. The property/gun belongs to the applicant. It is a valuable article. The applicant is having the licence, which had been produced before the court below. The applicant had filed the application on 6/2/2004 within the period from the date of knowledge. Even otherwise the provision is such that when the Court passes an order, it should be construed in such a way that it should not be such, which deprives a person of the right accrued.

Having considered the totality of the circumstances & in view of the aforesaid judgments, the petition is allowed. The impugned order dated 16/8/2004 passed by the court below is set aside. The seized article i.e. gun be returned to the applicant.

Sd/-
Acting Chief Justice

Hande/-

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